

25053. Adulteration and misbranding of nitrous oxide. U. S. v. Five Cylinders of Nitrous Oxide and U. S. v. Three Cylinders Thereof. Default decree of condemnation and destruction. (F. & D. nos 35433, 35532. Sample nos. 19491-B, 35127-B.)

These two actions were based on shipments of a product which had been sold under the name "nitrous oxide." Examination disclosed that it differed from the standard for nitrous oxide as stated in the United States Pharmacopoeia. It also was found that the article had been manufactured in a State other than that which the label of the product represented as the State of manufacture and that other statements on the label were incorrect.

On April 25 and May 22, 1935, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of a product sold as nitrous oxide, the two libels involving eight cylinders of the product, alleging shipments in interstate commerce on or about March 14, 1935 and March 20, 1935, respectively, by Wall Chemicals, Inc., from Detroit, Mich., to Cleveland, Ohio, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article shipped on March 14, 1935, was labeled in part: (Cylinder) "Nitrous Oxide for Anesthesia", "Manufactured and Guaranteed by the Cheney Chemical Company, Cleveland, Ohio"; (tag) "Smooth Flowing Nitrous Oxide Wall Cyl. No. G 166 gallons 3200 Wall Chemicals, Inc. Anhydrous—Laboratory analysis No. 8/14/35 L. V. L." The article shipped on March 20, 1935, was labeled in part: (Cylinder) "Anhydrous Nitrous Oxide."

Analyses of samples of the product showed that they differed from the pharmacopoeial standard in that they contained 20 percent and 25.7 percent, respectively, of gases uncondensed at the temperature of liquid air.

It was charged in each of the two libels that the article was adulterated in that it was sold under a name recognized in the United States Pharmacopoeia and differed from the standard of strength, quality, and purity as determined by the test laid down by said pharmacopoeia, and the article's own standard was not stated on its label.

Misbranding was charged in the libel filed April 25, 1935, in that the article was falsely labeled as to the State in which it was manufactured or produced, in that it was not manufactured or produced in the State of Ohio, and in that the statements on the label of the article, namely, "Nitrous Oxide for Anesthesia" and "Manufactured and Guaranteed by the Cheney Chemical Company, Cleveland, Ohio", were false and misleading in that the article did not consist solely of nitrous oxide and was not manufactured by the Cheney Chemical Co., Cleveland, Ohio, and in that the article was offered for sale under the name of another article, viz, "Nitrous Oxide." Misbranding was charged in the libel filed May 22, 1935, in that the statement in the labeling of the article, viz, "Anhydrous Nitrous Oxide", was false and misleading in that the article did not consist of nitrous oxide but consisted of a mixture of nitrous oxide with material portions of other gases.

On September 10, 1935, no claimant having appeared in either case, judgment of condemnation, forfeiture, and destruction of the contents of the cylinders was entered in each, the judgment providing that after execution thereunder the cylinders should be returned to Wall Chemicals, Inc.

W. R. GREGG, *Acting Secretary of Agriculture.*

25054. Adulteration of Kastor Gems, adulteration and misbranding of Vegex Vitamin Yeast Candy, and misbranding of Nyalyptus and Pfeiffer's Hamburg Tea. U. S. v. 22 Bottles of Nyalyptus (and other cases). Default decrees of condemnation and destruction. (F. & D. nos. 36305, 36306, 36307, 36308. Sample no. 33559-B.)

These cases included a lot of Kastor Gems and Vegex Vitamin Yeast Candy which were contaminated with insect excreta and other evidences of insect-infestation. The labeling of Vegex Vitamin Yeast Candy and the labeling of the two drug preparations, known as Nyalyptus and Pfeiffer's Hamburg Tea, which were also included, contained unwarranted curative and therapeutic claims.

On September 23, 1935, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 22 bottles of Nyalyptus, 24 packages of Pfeiffer's Hamburg Tea, 98 bars of Vegex Vitamin Yeast Candy, and 28 boxes of Kastor Gems, alleging that the articles had been shipped in interstate commerce on or about June 11, 1935, by the Fort Wayne Drug Co.,

from Fort Wayne, Ind., and charging adulteration and/or misbranding in violation of the Food and Drugs Act as amended.

Analysis of Nyalptus and Pfeiffer's Hamburg Tea showed that the former consisted essentially of creosote, eucalyptol, sugars, and water, and that the latter consisted of plant drugs, principally senna, with small proportions of fennel seed and anise seed. Examination of the Vegex Vitamin Yeast Candy and the Kastor Gems showed that the products were contaminated with insect excreta, larvae shells, and other evidence of insect-infestation.

The Vegex Vitamin Yeast Candy was alleged to be adulterated under the provisions of law applicable to food in that it consisted in whole or in part of a filthy animal substance. The Kastor Gems were alleged to be adulterated under the provisions of the law applicable to drugs in that the purity of the article fell below the professed standard under which it was sold, namely, "Pure Castor Oil In Delicious Chocolate Bon Bons." The Vegex Vitamin Yeast Candy, Nyalptus, and Pfeiffer's Hamburg Tea were alleged to be misbranded under the provisions of the law applicable to drugs in that the following statements regarding their curative or therapeutic effects, appearing in the labeling, were false and fraudulent: (Vegex Vitamin Yeast Candy, display carton) "Health Food * * * Aids Digestion, Helps Preserve Teeth. Stimulates Vigor * * * Health", (outside wrapper) "Health Value * * * aid digestion * * * stimulates energy, promotes good health", (inside wrapper) "For high health and vitality"; (Nyalptus, carton) "For coughs, bronchitis * * * Hoarseness, Loss of Voice, Distress of Asthma * * * The * * * Cough Syrup", (bottle) "For Coughs, Bronchitis * * * Loss of Voice and Distress of Asthma"; (Pfeiffer's Hamburg Tea) "An Unfailing Preventive of Influenza."

On November 27, November 29, and December 2, 1935, no claimant having appeared, judgments of condemnation were entered and it was ordered that the product be destroyed.

W. R. GREGG, *Acting Secretary of Agriculture.*

25055. U. S. v. King & Howe, Inc. and Royal Indemnity Co. Suits instituted for invoice value of three lots of imported stramonium leaves which had been entered under term entry bond and subsequently found to be adulterated. Verdicts and judgments for the Government. Affirmed.

On February 17, March 10, and April 18, 1930, three lots of stramonium leaves were entered at the port of New York under a term entry bond conditioned that the drug comply with the requirements of all laws of the United States. The drug, upon examination by this Department, was found to differ from the standard prescribed in the United States Pharmacopoeia. The importer was notified that the drug was adulterated in violation of the Food and Drugs Act and instructed to surrender it for export or destruction under customs supervision, and upon refusal to comply with said instructions suits were instituted by the Government on March 16, 1931, in the district court for the Southern District of New York against King & Howe, Inc., and the Royal Indemnity Co., principal and surety, respectively, on the bond.

On February 5 and 6, 1934, the cases were tried and verdicts were returned for the Government. On July 18, 1934, judgments were entered for \$8,381.42 less duties which had been paid. On July 16, 1935, the judgments of the district court were affirmed in the Circuit Court of Appeals for the Second Circuit, the court handing down the following opinion:

SWAN, *Circuit Judge*: These two actions were tried together upon stipulated facts before a jury of one which was directed to return a verdict for the plaintiff.

Both actions are upon the same bond and each deals with an importation of stramonium herbs in bales. Upon arrival these herbs were delivered by the collector of customs to the importer, King & Howe, Inc. under a term entry bond executed by the importer as principal and Royal Indemnity Company as surety. The complaints allege that the herbs were imported under a name recognized in the United States Pharmacopoeia and were found, upon an examination of samples, to vary from the Pharmacopoeia standard. Because of noncompliance in this respect with the provisions of the Food and Drugs Act, 21 USCA) the importer was instructed to destroy or export the herbs within three months and on failure to do so was notified to return them to customs custody. The importer failed to redeliver them to customs custody and thereby incurred, it is charged, a penalty of a sum equal to the invoice value of the merchandise plus duty thereon. To recover this sum suit was brought upon the bond. The appe